

ARTICLE 7**PROCEDURES FOR VARIANCE APPLICATIONS, APPEALS, REQUESTS
FOR INTERPRETATIONS OR OTHER SPECIAL QUESTIONS****§ 7.01. APPLICATION FOR VARIANCES OR FOR THE DIRECTION OF THE
ISSUANCE OF CERTAIN PERMITS AND CERTIFICATES. [Amended
09/29/09 by Ord. No. 1943]**

A. **General.** It is the intent of this section to set forth the procedures for applications to the Planning Board and Zoning Board of Adjustment for variances and for the direction of the issuance of certain permits as permitted by this ordinance. In addition to the procedures set forth in the following subsections for each type of application, the procedures set forth for processing and review of site plan and subdivision applications in this ordinance shall apply, unless the context clearly indicates otherwise or unless contrary to law, including but not necessarily limited to the following:

1. the filing procedures in § 8.03;
2. the procedures for filing simultaneous applications in § 8.04;
3. the completeness review procedures in § 8.05 and § 9.01;
4. the general review procedures in § 8.06;
5. the conditional approval provisions in § 8.13;
6. the default approval provisions in § 8.14;
7. the provisions for extensions and tolling of approvals in § 8.15 and § 8.16, respectively; and
8. the provisions for reservation of public areas, payment of taxes and assessments, disclosure of ownership and binding nature of approvals in § 8.24, § 8.25, § 8.26 and § 8.27, respectively.

B. **Review of existing nonconforming conditions in connection with applications for variances or for the direction of the issuance of certain permits.** In reviewing applications for variances or for the direction of the issuance of certain permits, the Board shall determine whether any existing nonconforming conditions involving the subject property will exacerbate, intensify, alter, affect or in some way result in a significant impact on the proposed use, structure or land. If the Board finds that no substantial impact or detriment will result, the Board shall so state in its findings of fact

in the resolution for the application, without the need for such existing nonconforming conditions to meet the criteria established by N.J.S.A. 40:55D-34, 36, 51a, 51b, 70c and 70d and this ordinance for variances or exceptions. If the Board finds that substantial impacts or detriments will result, however, the application shall not be approved unless and until the applicant agrees to mitigate or eliminate such impacts or detriments to the maximum extent feasible. The above shall not be construed to alter the review procedures nor the criteria for granting variances or exceptions for violations proposed by the development or existing illegally on the subject property.

C. **"C" Variance applications.** Applications to the Zoning Board of Adjustment may be taken for relief from the zoning regulations, Articles 11 through 19 of this ordinance, provided that if the proposed development requires approval by the Planning Board of a subdivision, site plan or conditional use, the Planning Board shall also hear any such variance applications, except when "D" variances are involved as provided in § 7.01D below. A developer may file an application for development with the appropriate Board under this section without prior application to the Zoning Officer or Construction Official. The following provisions shall apply to "C" variance applications:

1. When subdivision, site plan or conditional use approval is required, the developer may elect to submit a separate application with the Planning Board requesting approval of the variance and a subsequent application for any such other required approval. Any separate approval of the variance shall be conditioned upon grant of all required subsequent approvals by the Planning Board.
2. Any application pursuant to this section shall be required to submit the information required by § 9.11, and shall be reviewed for completeness in accordance with the procedures set forth in § 8.05 and § 9.01.
3. An application pursuant to this section shall stay all proceedings in the same manner as specified in § 7.02B.4.
4. A public hearing shall be held in accordance with the provisions for hearings in Article 4.
5. The applicant shall give public notice of the hearing in the manner specified for development applications in § 4.04. Affidavits of proof of service of notice shall be submitted at least two (2) business days prior to the hearing.

6. There must be a showing by the applicant, and the Board must find, all of the following:
 - a. The strict application of the specific zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of the subject property due to (1) exceptional narrowness, shallowness or shape of the subject property, (2) exceptional topographic conditions or physical features uniquely affecting the subject property, or (3) an extraordinary and exceptional situation uniquely affecting the subject property or the structures lawfully existing thereon; or, the purposes of the Municipal Land Use Law at N.J.S.A. 40:55D-2 would be advanced by the requested variance, and the benefits of the variance would substantially outweigh any detriment;
 - b. The variance can be granted without substantial detriment to the public good; and
 - c. The grant of the variance will not substantially impair the intent of the zone plan and zoning regulations.
 7. The Board shall render a decision not later than one hundred twenty (120) days after the date the application is certified to be complete pursuant to § 8.05 and § 9.01, or within such further time as may be consented to by the applicant.
 8. The Zoning Board of Adjustment may refer an application pursuant to this section to any appropriate person or agency, including the Planning Board, for its report; provided that such reference shall not extend the period of time within which the Board shall act.
- D. **"D" Variance applications.** In particular cases, applications to the Zoning Board of Adjustment may be taken for relief from the zoning regulations, Articles 11 through 19 of this ordinance, involving "D" variance requests. A developer may file an application for a "D" variance with the Zoning Board of Adjustment without prior application to the Zoning Officer or Construction Official. Whenever a proposed development involves a "D" variance, the Zoning Board of Adjustment shall also hear any subdivision, site plan, conditional use application and any other variance applications required for the development. The following provisions shall apply to "D" variance applications:

1. The developer may elect to submit a separate application with the Zoning Board of Adjustment requesting approval of the variance and a subsequent application for any required approval of a subdivision, site plan or conditional use.

Any separate approval of the variance shall be conditioned upon grant of all required subsequent approvals by the Zoning Board of Adjustment.

2. Any application pursuant to this section shall be required to submit the information required by § 9.11, and shall be reviewed for completeness in accordance with the procedures set forth in § 8.05 and § 9.01.
3. An application pursuant to this section shall stay all proceedings in the same manner as specified in § 7.02B.4.
4. A public hearing shall be held in accordance with the provisions for hearings in Article 4.
5. The applicant shall give public notice of the hearing in the manner specified for development applications in § 4.04. Affidavits of proof of service of notice shall be submitted at least two (2) business days prior to the hearing.
6. There must be a showing by the applicant, and the Board must find, all of the following:
 - a. special reasons exist justifying the grant of the variance;
 - b. the variance can be granted without substantial detriment to the public good; and
 - c. the grant of the variance will not substantially impair the intent of the zone plan and zoning regulations.
7. Any decision of the Board to grant a "D" variance pursuant this section shall only be by an affirmative vote of at least five (5) members of the Board.
8. The Zoning Board of Adjustment shall render a decision not later than one hundred twenty (120) days after the date the application is certified to be complete pursuant to § 8.05 and § 9.01, or within such further time as may be consented to by the applicant.

9. The Zoning Board of Adjustment may refer an application pursuant to this section to any appropriate person or agency, including the Planning Board, for its report; provided that such reference shall not extend the period of time within which the Board shall act.

E. Application for issuance of permits for areas on Official Map.

Applications to the Zoning Board of Adjustment may be taken for relief necessary to issue a permit for any building or structure in the bed of any street or public drainage way, flood control basin or public area reserved on the Official Map; provided that if the proposed development requires approval by the Planning Board of a subdivision, site plan or conditional use, the Planning Board shall also hear any application pursuant to this section. A developer may file an application for development with the appropriate Board under this section without prior application to the Construction Official. The following provisions shall apply to such applications:

1. When subdivision, site plan or conditional use approval is required, the developer may elect to submit a separate application with the Planning Board requesting direction for the issuance of a permit and a subsequent application for any such other required approval. Any separate direction for the issuance of a permit shall be conditioned upon grant of all required subsequent approvals by the Planning Board.
2. Any application pursuant to this section shall be required to submit a completed application form and a map showing the property in question and the location of the proposed building and/or structure in relation to the bed of the mapped street or public drainage way, flood control basin or public area reserved on the Official Map. The following number of copies shall be submitted:
 - a. If the Board of Adjustment has jurisdiction, one (1) original and ten (10) copies of the application form and eleven (11) copies of the map.
 - b. If the Planning Board has jurisdiction, three (3) signed original application forms and eighteen (18) copies of same, and eighteen (18) copies of the map.

- c. If review by the Architectural Review Board is required, five (5) additional copies of the map shall be submitted.

In addition, fees required by Article 5 shall be submitted, as well as proof of payment of taxes and assessments.

3. An application pursuant to this section shall stay all proceedings in the same manner as specified in § 7.02B.4.
4. A public hearing shall be held in accordance with the provisions for hearings Article 4.
5. The applicant shall give public notice of the hearing in the manner specified for development applications in § 4.04. Affidavits of proof of service of notice shall be submitted at least two (2) business days prior to the hearing.
6. There must be a showing by the applicant, and the Board must find, that the subject property cannot yield a reasonable return to the owner unless a building permit is granted.
7. Any decision of the Board to direct the issuance of a permit pursuant to this section shall only be by an affirmative vote of a majority of the full-authorized membership of the Board.
8. Any decision of the Board to direct the issuance of a permit pursuant to this section shall be in accordance with terms and conditions which will as little as practicable increase the cost of opening such street, or tend to cause a minimum change of the Official Map, and the Board shall impose reasonable requirements as a condition of granting the permit so as to promote the health, morals, safety and general welfare of the public.
9. The Zoning Board of Adjustment shall render a decision not later than one hundred twenty (120) days after the date the application is certified to be complete pursuant to § 8.05 and § 9.01, or within such further time as may be consented to by the applicant.
10. The Zoning Board of Adjustment may refer an application pursuant to this section to any appropriate person or agency, including the Planning Board, for its report;

provided that such reference shall not extend the period of time within which the Board shall act.

F. Application for permits for lot not abutting a street.

Applications to the Zoning Board of Adjustment may be taken for relief necessary to issue a permit for any building or structure on a lot which does not abut a street giving access to such building or structure; provided that if the proposed development requires approval by the Planning Board of a subdivision, site plan or conditional use, the Planning Board shall also hear any application pursuant to this section. A developer may file an application for development with the appropriate Board under this section without prior application to the Construction Official. The following provisions shall apply to such applications:

1. When subdivision, site plan or conditional use approval is required, the developer may elect to submit a separate application with the Planning Board requesting direction for the issuance of a permit and a subsequent application for any such other required approvals. The separate direction for the issuance of a permit shall be conditioned upon grant of all required subsequent approvals by the Planning Board.
2. Any application pursuant to this section shall be required to submit a completed application form and a map showing the property in question and the manner by which access will be provided to the building and/or structure, including the location of the nearest street from which access may be obtained. The following number of copies shall be submitted:
 - a. If the Board of Adjustment has jurisdiction, one (1) original and ten (10) copies of the application form and eleven (11) copies of the map.
 - b. If the Planning Board has jurisdiction, three (3) signed original application forms and eighteen (18) copies of same, and eighteen (18) copies of the map.
 - c. If review by the Architectural Review Board is required, five (5) additional copies of the map shall be submitted.

In addition, fees required by Article 5 shall be submitted, as well as proof of payment of taxes and assessments.

3. An application pursuant to this section shall stay all proceedings in the same manner as specified in § 7.02B.4.

4. A public hearing shall be held in accordance with the provisions for hearings in Article 4.
 5. The applicant shall give public notice of the hearing in the manner specified for development applications in § 4.04. Affidavits of proof of service of notice shall be submitted at least two (2) business days prior to the hearing.
 6. There must be a showing by the applicant, and the Board must find, that the refusal to issue a permit would entail practical difficulty or hardship, or that the circumstances of the case do not require the building or structure to be related to a street.
 7. Any decision of the Board to direct the issuance of a permit pursuant to this section shall be in accordance with terms and conditions which will provide adequate access for fire fighting equipment, ambulances and other emergency vehicles necessary for the protection of health and safety and that will protect any future street layout shown on the Official Map or on the circulation plan element of the Town Master Plan.
 8. The Board shall render a decision not later than one hundred twenty (120) days after the date the application is certified to be complete pursuant to § 8.05 and § 9.01, or within such further time as may be consented to by the applicant.
 9. The Zoning Board of Adjustment may refer an application pursuant to this section to any appropriate person or agency, including the Planning Board, for its report; provided that such reference shall not extend the period of time within which the Board shall act.
- G. **Expiration of variances.** Any variance hereafter granted from the zoning regulations, Articles 11 through 19, shall expire by limitation unless the construction, alteration or use, as applicable, permitted by the variance shall have been actually commenced within twelve (12) months of the date of the resolution of approval of the variance; provided, however, that the running of the period of limitation herein provided shall be tolled in the case of legal action as provided in § 8.16. Notwithstanding the above, any variance hereafter granted in connection with a subdivision or site plan application shall not expire as provided above, but shall expire in the same manner as the subdivision or site plan approval, as applicable, as set forth in Article 8.

- H. **Certificate of Nonconforming Use.** The prospective purchaser, prospective mortgagee, existing owner or any other person interested in any land upon which a non-conforming use or structure exists may apply in writing for the issuance of a certificate certifying that the use or structure existing before the adoption of the ordinance which rendered the use or structure non-conforming. Application for such certificate shall be made on the form provided by the Zoning Officer. The applicant has the burden of proof and shall provide all information requested in the application by the Zoning Officer to establish whether the applicant qualifies for a certificate hereunder.

Application pursuant hereto may be made: (i) to the Zoning Officer within one year of the adoption of the ordinance which rendered the use or structure non-conforming, or (ii) at any time after the one year period to the Board of Adjustment.

For applications to the Zoning Officer, the Zoning Officer shall be entitled to demand and receive for such certificate issued by him a reasonable fee of \$10.00 for each certificate issued and \$2.00 for continuation thereof if made within three years of the date of the issuance of the original certificate. The fees collected by the Zoning Officer shall be paid by him to the Town of Westfield.

Applications to the Board of Adjustment shall be made in accordance with the procedure for such applications established under Section 7.02C.

Appeals from the Zoning Officers' determination shall be to the Board of Adjustment in accordance with the provisions of Section 7.02B.

A certificate shall be issued if the applicant establishes the existence of the non-conforming use or structure as provided herein within 45 days of a completed application. **[Amended 09/29/09 by Ord. No. 1943]**

§ 7.02. PROCEDURE FOR APPEALS, REQUESTS FOR INTERPRETATIONS OR OTHER SPECIAL QUESTIONS.

- A. **General.** It is the intent of this section to set forth the procedure for appeals, interpretations and requests concerning special questions to the Zoning Board of Adjustment as permitted by this ordinance. In addition to the procedures set forth in the following subsections for each type of application, the procedures set forth for processing and review of site plan and subdivision applications in this ordinance shall apply, unless the context clearly indicates otherwise or unless contrary to law, including the following:

1. the filing procedures in § 8.03;
2. the procedures for filing simultaneous applications in § 8.04;
3. the completeness review procedures in § 8.05 and § 9.01;
4. the general review procedures in § 8.06;
5. the conditional approval provisions in § 8.13;
6. the default approval provisions in § 8.14;
7. the provisions for extensions and tolling of approvals in § 8.15 and § 8.16, respectively; and
8. the provisions for reservation of public areas, payment of taxes and assessments, disclosure of ownership and binding nature of approvals in § 8.24, § 8.25, § 8.26 and § 8.27, respectively.

B. **Appeal alleging erroneous Zoning Officer decision.** Appeals to the Zoning Board of Adjustment may be taken by any interested party when it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by the Zoning Officer of the Town based on or made in the enforcement of the zoning regulations, Articles 11 through 19 of this ordinance. The following provisions shall apply to such appeals:

1. Appeals must be taken within twenty (20) days of the decision of the Zoning Officer.
2. A notice of appeal shall be filed with the Zoning Officer, specifying the grounds of the appeal. The Zoning Officer shall immediately transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
3. Fees required by Article 5 shall be submitted with the notice of appeal, as well as proof of payment of taxes and assessments.

4. An appeal to the Zoning Board of Adjustment shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made unless the Zoning Officer certifies to the Zoning Board of Adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by an order of the Superior Court upon notice to the officer from whom the appeal is taken and on due cause shown.
 5. A public hearing shall be held in accordance with the provisions for hearings in Article 4.
 6. The appellant shall give public notice of the hearing in the manner specified for development applications in § 4.04; provided that the parties entitled to notice shall be limited to those specified in § 4.04B.1. If the appeal is made by an interested party other than the owner of the property which was the subject of the decision by the Zoning Officer, notice shall also be sent to said property owner, in addition to the parties specified in § 4.04B.1. Affidavits of proof of service of notice shall be submitted at least two (2) business days prior to the hearing.
 7. The Zoning Board of Adjustment may reverse or affirm, wholly or in part, or may modify the action, order, requirement, decision, interpretation or determination appealed from and to that end shall have all the powers of the Zoning Officer.
 8. The Zoning Board of Adjustment shall render a decision not later than one hundred twenty (120) days after the date the appeal is taken from the Zoning Officer, or within such further time as may be consented to by the applicant.
 9. The Zoning Board of Adjustment may refer an application pursuant to this section to any appropriate person or agency, including the Planning Board, for its report; provided that such reference shall not extend the period of time within which the Board shall act.
- C. **Request for interpretation or other special questions.** The Zoning Board of Adjustment shall hear and decide requests for interpretation of the zoning map or zoning regulations, Articles 11 through 19 of this ordinance, or for decisions upon other special questions upon which the Board is

specifically authorized to pass by this ordinance. The following provisions shall apply to such requests:

1. An application form shall be completed and shall be accompanied by a specific written request which outlines that part of the zoning map, zoning regulations or official map for which an interpretation is sought, or outlines the special question that the Board is asked to consider.
2. One (1) signed original and ten (10) copies of the application form and all accompanying documentation shall be submitted to the Secretary of the Board.
3. Fees required by Article 5 shall be submitted with the request, as well as proof of payment of taxes and assessments.
4. A public hearing shall be held in accordance with the provisions for hearings in Article 4.
5. The applicant shall publish notice of the hearing on the request in the official newspaper of the Town, if there be one, or in a newspaper of general circulation in the Town. If the request for interpretation or special question concerns a specific property, the applicant shall also give public notice of the hearing in the manner specified for development applications in § 4.04; provided that the parties entitled to notice shall be limited to those specified in § 4.04B.1. If the request is made by a person other than the owner of the specific property which is the concern of the interpretation or special question, notice shall also be sent to said property owner, in addition to the parties specified in § 4.04B.1. Affidavits of proof of service of notice shall be submitted at least two (2) business days prior to the hearing.
6. The Zoning Board of Adjustment may refer an application pursuant to this section to any appropriate person or agency, including the Planning Board, for its report.

§ 7.03. APPEALS FROM A FINAL DECISION OF THE BOARD OF ADJUSTMENT OR PLANNING BOARD.

Any applicant before the Board of Adjustment or Planning Board or any interested party may appeal a final decision of the Board of Adjustment or Planning Board adverse to them to the Superior Court of New Jersey in accordance with the provisions of law. Such appeal shall be made within forty-five (45) days after a notice of the decision has been published in the official newspaper of the Town of Westfield.

§ 7.04. APPEAL BY PUBLIC UTILITIES.

If a public utility, as defined by N.J.S.A. 48:2-13, is aggrieved by the action of a Town agency through said agency's exercise of its powers under this ordinance or the Municipal Land Use Law, with respect to any action in which the public utility has an interest, an appeal to the Board of Public Utilities of the State of New Jersey may be taken pursuant to N.J.S.A. 40:55D-19.

§ 7.05. NO APPEAL PERMITTED TO THE TOWN COUNCIL.

The Land Use Ordinance of the Town of Westfield does not permit appeals to the Town Council pursuant to N.J.S.A. 40:55D-17.

§ 7.06. PROTEST REQUIRING AN ENHANCED VOTE.

A protest against any proposed amendment or revision of the zoning regulations may be filed with the Town Clerk, signed by the owners of twenty percent (20%) or more either of the area of the lots or land included in such proposed change, or of the lots or land extending two hundred (200) feet in all directions therefrom inclusive of street space, whether within or without the Town. Such amendment or revision shall not become effective following the filing of such protest except by the favorable vote of two thirds (2/3) of all the members of Town Council of the Town of Westfield.